

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 14076 of 2000

Between:

- 1 Talachutla Mohan Rao S/o Late Narayana Appala Naidu
R/o Uttaravelli, Merakamudidam Mandal Vizaianagaram Dist
- 2 Talachutla Suryanarayana Murthy S/o Late Narayana Appala Naidu
R/o Uttaravelli, Merakamudidam Mandal Vizaiangaram Dist
- 3 Talachutla Rama Lakshmamma W/o Late Narayana Appala Naidu
R/o Uttaravelli, Merakamudidam Mandal Vizaiangaram Dist

..... PETITIONERS

AND

- 1 The Dy. Registrar Of Co-op Societies.,
Vizaiangaram Dist
- 2 The Cooperative Sub- Registrar-cum- Sales Officer
C/o Divisional Cooperative Office Vizaiangaram Dist
- 3 Uttaravelli Primary Agricultural Co-op Society Ltd Rep by its Secretary
Vizaiangaram
- 4 Talachutla Rajaratnam S/o Late Narayana Appala Naidu
Uttaravelli, Vizaiangaram Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring that the A.P.Co-operative Tribunal Vijayawada has jurisdiction under Section 76 of the A.P.Co-operative Societies Act to entertain an appeal against the order passed by the 2nd respondent under Section 70 of the A.P.Co-operative Societies Act read with Rule 52 and Sub-Rule 21 of the A.P.Co-operative Societies ,1964 and consequently set aside the order passed by the A.P.Co-operative Tribunal Vijayawada in O.A.No.347/1996 Dt: 19-04-2000 and pass such other order or orders .

Counsel for the Petitioner: MR.D.V.NAGARJUNA BABU

Counsel for the Respondent Nos.1 to 3: GP FOR CO-OPERATION

Counsel for the Respondent No.4: None appeared.

The Court made the following :

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ORDER:

This writ petition is filed by the petitioners seeking for a direction in the nature of writ of mandamus to declare that the A.P. Co-operative Tribunal, Vijayawada has jurisdiction under Section 76 of the A.P. Co-operative Societies Act (for short 'the Act') to entertain an appeal against the order passed by the 2nd respondent under Section 70 of the A.P. Co-operative Societies Act read with Rule 52 and Sub-Rule 21 of the A.P. Co-operative Societies Rules, 1964 (for short 'the Rules') and consequently, to set aside the order passed by the A.P. Co-operative Tribunal, Vijayawada in O.A.No.347/1996 Dt: 19-04-2000.

The facts leading to the filing of this writ petition are that Petitioner No.3 is the wife of late Narayana Appala Naidu and Petitioner Nos. 1, 2 and Respondent No.4 are their sons. It is stated that the fourth respondent worked as President of the third respondent-Uttaravelli Primary Agricultural Co-operative Society Limited, Vijayanagaram, for certain period. After completion of his tenure in such capacity, surcharge proceedings were initiated against the fourth respondent and an order of surcharge was passed for a sum of Rs.95,798.34ps., on the ground that he failed to pay the same to the society. To raise the attachment, the properties of the petitioners' family have been attached. Pursuant to the same when the properties were sought to be auctioned, the petitioners filed an application before the second respondent objecting the sale of the said lands on the ground that the properties which are sought to be auctioned fell to their share during the partition and therefore only the properties which fell to the share of the fourth respondent can be sold. The said objection petition was dismissed by the second respondent-sale officer stating that except the unregistered settlement deed dated 26-8-1996, the petitioners have not produced any other evidence in support of their claim. The petitioners' case is that their properties were partitioned on 25-2-1983, which is much prior to the surcharge proceedings dated 22-4-1986 passed against the fourth respondent. Aggrieved by the order dated 20-11-1996 passed by the second respondent-sale officer, the petitioners filed an appeal in O.A.NO.347 of 1996 before the A.P. Cooperative Tribunal, Vijayawada. The Tribunal vide order dated 19-4-2000 dismissed the said appeal on the ground that the said O.A. is not maintainable and the only remedy that is available to the petitioners, is to approach the Civil Court in accordance with sub rule 21(c) of Rule 52 of the A.P. Co-operative Societies Rules, 1964 (for short 'the Rules').

Assailing the same, this writ petition is filed.

Heard the learned counsel for both the parties and Perused the entire material available on record.

It is contended by the learned counsel for the petitioners that by virtue of the amendment of the Act, all the orders passed under Section 70 of the Act, are appealable under the provisions of Section 76 of the Act and thereby the provisions under Rule 52 sub-Rule 21 (c) gets extinguished and therefore, the order of the Tribunal holding that the O.A. is not maintainable, is not sustainable.

On the rival contentions, the crux of the point that arises for consideration is as to whether the order passed by the second respondent under section 70 of the Act, is appealable under Section 76 of the Act.

At this stage, it is relevant to go through the provisions of sub-rule 21 (a) and 21 (c) of Rule 52 of the Rules.

Sub-rule 21(a) of Rule 52 of the Rules reads thus:

“Where any claim is preferred or any objection is made to the attachment of any property under this rule on the ground that such property is not liable to such attachment, the concerned authority shall investigate the claim or objection and dispose it of the same on the merits”

Sub-rule 21(c) of Rule 52 of the Rules, reads thus:

“Where a claim or an objection is preferred that party against whom an order is made may institute a civil suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive”

Admittedly the second respondent passed the order rejecting the petitioners' claim on 20-11-1996. Upto the year 1991, there was no right of appeal against the decisions passed under Section 70 of the A.P. Co-operative Societies Act (for short 'the Act'). Sections 70 to

74 of the Act deal with the Execution of Decisions, Decrees and Orders. Section 70 of the Act deals with the powers of the Registrar to recover certain amount by attachment and sale of property and execution of orders. Rule 52 of the Rules deals with the procedure in execution of decrees, decisions or orders.

In the instant case, there cannot be any dispute that the order passed by the second respondent is only in exercise of the powers under Section 70 of the A.P. Co-operative Societies Act. If that be so, prior to 1991, there was no right of appeal against the order under section 70 of the Act, but by virtue of the amendment of the Act 15 of 1991, Section 76 has been substituted by Act No:15 of 1991 enabling the orders passed under Section 70 of the Act are appealable.

In this view of the matter, the petitioners have the right of appeal under Section 76 of the Act and the Tribunal has erroneously dismissed the appeal filed by the petitioners solely on the ground that the appeal is not maintainable in view of sub-rule 21(c) of Rule 52 of the Rules. Therefore, the order passed by the Tribunal is illegal, unsustainable and contrary to Section 76 read with Section 70 of the A.P. Co-operative Societies Act.

In the above circumstances of the case, without expressing any opinion on the merits of the case, I feel that it is just and proper to direct the appellate authority to consider the appeal preferred by the petitioners and dispose of the same on its own merits in accordance with law.

Accordingly, the order of the A.P. Co-operative Tribunal, Vijayawada, made in O.A.No.347 of 1996 dated 19-4-2000 is set aside and the matter is remitted back to the A.P. Co-operative Tribunal, Vijayawada for fresh consideration. However, it is made clear that the learned A.P. Co-operative Tribunal, Vijayawada, shall consider the appeal and dispose of the same on its own merits in accordance with law after giving reasonable opportunity to both the parties within a period of six months from the date of receipt of a copy of this order.

With the observation as above, the writ petition is disposed of. There shall be no order as to costs.

4th March, 2004

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Copy to:

- 1 The Deputy Registrar of Co-op Societies.,
Vizaiangaram District.
- 2 The Cooperative Sub- Registrar-cum- Sales Officer
C/o Divisional Cooperative Office, Vizaiangaram District.
- 3 The Secretary,

Uttaravelli Primary Agricultural Co-op Society Ltd,

Vizaiangaram

4 Two CCs to the G.P. for Co-operation,

High Court Buildings, Hyderabad.(O.U.T.)

5 Two CD copies.